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NORTHERN DISTRICT OF CALIFORNIA

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U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

OAKLAND DIVISION

JAN 02 2001

UNITED EPITAXY COMPANY, LTD.,

Plaintiff,

v.

HEWLETT-PACKARD COMPANY and  
DOES 1 - 10, inclusive,

Defendants.

HEWLETT-PACKARD COMPANY, AGILENT  
TECHNOLOGIES, INC. and LUMILEDS  
LIGHTING U.S., LLC,

Counterclaimants,

v.

UNITED EPITAXY COMPANY, LTD.,

Counter Defendant.

CASE NO. C 00-2518 CW (PVT)

PROTECTIVE ORDER

**PROTECTIVE ORDER**

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the parties hereby stipulate to the following Protective Order to govern the disclosure of confidential discovery materials and testimony.

1. In connection with the discovery in this action, the parties may designate any materials including electronic files, documents, things, testimony or other information derived therefrom, as "CONFIDENTIAL" (hereinafter "Confidential Material") under the terms of this Stipulated Protective Order (hereinafter "Order"). Confidential Material is information which has not been made public and may include but is not limited to: (1) the method of manufacture of any past, present, or future product of a party; (2) the construction, development, function, or operation of any past, present, or future product of a party; (3) pricing, income, profits, losses, expenses, costs, overhead, royalty rates or sales quantities relating to any past, present, or future product of a party; (4) contractual relationships with third parties, including, but not limited to, agreements in settlement of litigation; (5) business, financial, or marketing plans, projections, or data of a party; (6) the accounting methods of a party, including methods of allocating costs and overhead; (7) the identification of customers or suppliers of a party; (8) research and development materials of a party, including both product and market research; (9) patent applications; or (10) any such information of a third party, the disclosure of which information may have the effect of causing harm to the third party. Before designating materials "CONFIDENTIAL," a party must make a good faith determination that the level of protection is warranted under Rule 26(c) of the Federal Rules of Civil Procedure.

2. Confidential Material produced pursuant to this Order may be disclosed or made available only to: (i) the Court; (ii) outside counsel of record assisting in the preparation and presentation of this action (including the paralegal, clerical, and secretarial staff employed by such counsel); (iii) counsel at Lee, Tsai & Partners assisting in the preparation and presentation of this action; (iv) the parties, including present and former officers, directors, in-house legal counsel, employees and agents involved in the preparation and presentation of this action; (v)

1 experts, consultants, translators, interpreters and independent contractors (including the  
2 necessary supporting staff of those experts, consultants, translators, and independent contractors),  
3 to the extent reasonably necessary to assist in the preparation and presentation of this action; (vi)  
4 court reporters and their necessary clerical assistants; and (vii) any other person as to whom all of  
5 the parties agree in a writing signed by the parties or their representatives.

6         3.       The parties may further designate certain discovery materials or testimony relating  
7 to, for example, research and development, processing, manufacturing, customer lists, licenses,  
8 sales and other financial information deemed by either party to be highly confidential and/or  
9 proprietary in nature as "CONFIDENTIAL - ATTORNEY'S EYES ONLY" (hereinafter  
10 "Attorney's Eyes Only Material"). Before designating materials "CONFIDENTIAL -  
11 ATTORNEY'S EYES ONLY," a party must make a good faith determination that the level of  
12 protection is warranted under Rule 26(c) of the Federal Rules of Civil Procedure. Attorney's  
13 Eyes Only Material, and the information contained therein, may be disclosed only to: (i) the  
14 Court; (ii) outside counsel of record for the parties assisting in the preparation and presentation  
15 of this action (including the paralegal, clerical, and secretarial staff employed by such counsel);  
16 (iii) one designated attorney at Lee, Tsai & Partners, identified in a letter to opposing counsel;  
17 (iv) three designated in-house counsel for each party, identified in a letter to opposing outside  
18 counsel, provided that the designated in-house attorneys are not presently and will not for three  
19 years from the date of this Order prosecute patent applications relating to AlInGaP LED  
20 technology; (v) experts, consultants, translators, interpreters and independent contractors  
21 (including the necessary supporting staff of those experts, consultants, translators, and  
22 independent contractors), who are not employed by any party, and who are assisting counsel in  
23 the preparation and presentation of this action, subject to paragraph 5 below; (vi) court reporters  
24 and their necessary clerical assistants; and (vii) any other person as to whom all of the parties  
25 agree in a writing signed by the parties or their representatives. Attorney's Eyes Only Material  
26 shall not be disclosed to any party or to any officer, director, or employee of any party, unless  
27 otherwise agreed in writing or ordered by the Court.

4. Confidential Material shall be so designated by stamping copies of the document produced to a party with the legend "CONFIDENTIAL." Attorney's Eyes Only Material shall be so designated by stamping copies of the document produced to a party with the legend "CONFIDENTIAL - ATTORNEY'S EYES ONLY." Stamping the legend "CONFIDENTIAL - ATTORNEY'S EYES ONLY" or "CONFIDENTIAL" on the cover of any multi-page document shall designate all pages of the document as Attorney's Eyes Only Material or Confidential Material, respectively, unless otherwise indicated by the producing party.

5. Prior to disclosing any Attorney's Eyes Only Material or Confidential Material to any individual listed in paragraphs 2(v) and 3(v) above, the following approval procedure must be used:

(a) The party seeking approval shall provide all other parties (via overnight mail) with:

- (i) the name of the proposed individual;
- (ii) the present employer and title of said individual;
- (iii) a résumé or curriculum vitae (including full work history) of said individual; and
- (iv) a written acknowledgment, in the form of Exhibit A attached hereto, signed by the individual for whom approval is sought.

Written acknowledgment by the individual's necessary supporting staff is not required.

(b) Within ten (10) calendar days after receipt of the information and written acknowledgment described in subparagraph (a), any party may object to the person proposed for approval if facts available to the objecting party give it a genuine reason to believe that there is a reasonable likelihood that the proposed individual may use Attorney's Eyes Only Material or Confidential Material for purposes other than for the prosecution, defense or settlement of this case. Objections must be based upon a good-faith belief in the likelihood of such unauthorized use and shall not be made for

1 purposes of delaying approval of said proposed individual. Failure to  
2 object within ten (10) calendar days to a person proposed shall be deemed  
3 approval, but shall not preclude a party from objecting to continued access  
4 by that person where facts suggesting a basis for objection are  
5 subsequently learned by a party. No party shall disclose Attorney's Eyes  
6 Only Material or Confidential Material when there is an outstanding  
7 objection, until such objection is resolved by the Court or the parties or the  
8 twenty-eight (28) day period set forth in subparagraph 5(c) has expired.

9 (c) If a party objects to an individual proposed for approval, the parties shall,  
10 within seven calendar (7) days from the date of the receipt of notice of  
11 objection (mailed via overnight delivery), confer and attempt to resolve  
12 the dispute. At that conference, the objecting party shall inform the other  
13 parties of its reasons for objecting to the proposed individual. If the  
14 parties cannot resolve the dispute, or if the conference does not take place,  
15 then the objecting party may move the Court, within twenty-eight (28)  
16 days from the date of the receipt of notice of objection, for an order that  
17 access to Attorney's Eyes Only Material or Confidential Material be  
18 denied to the proposed individual. The time periods are not to restrict  
19 either party from moving for a court order earlier if the circumstances so  
20 require.

21 (d) The parties agree that the information identified above in  
22 subparagraph 5(a) shall constitute sufficient information from which to  
23 approve or object to said proposed individual.

24 6. In the event that a party inadvertently fails to stamp or otherwise designate a  
25 document or other information "CONFIDENTIAL – ATTORNEY'S EYES ONLY" or  
26 "CONFIDENTIAL" at the time of its production, that party shall have ten (10) business days  
27 after such party knows or should have known of the improper designation to so designate the  
28 document or other information by notifying the opposing party in writing of the specific

1 document or information. In such case, the opposing party shall mark all known copies of such  
2 materials as "CONFIDENTIAL – ATTORNEY'S EYES ONLY" or "CONFIDENTIAL" and  
3 shall treat such materials as provided by the terms of this Order.

4 7. Testimony taken at a deposition, conference, hearing or trial may be designated as  
5 "CONFIDENTIAL – ATTORNEY'S EYES ONLY" or "CONFIDENTIAL" by making a  
6 statement to that effect on the record at the deposition or other proceeding. Arrangements shall  
7 be made with the court reporter taking and transcribing such proceeding to separately bind such  
8 portions of the transcript containing information designated as "CONFIDENTIAL –  
9 ATTORNEY'S EYES ONLY" or "CONFIDENTIAL," and to label such portions appropriately.

10 8. A party may also designate information disclosed at a deposition as either  
11 "CONFIDENTIAL – ATTORNEY'S EYES ONLY" or "CONFIDENTIAL" by notifying all  
12 parties in writing, within thirty (30) days of receipt of the transcript, of the specific pages and  
13 lines of the transcript which are designated as "CONFIDENTIAL – ATTORNEY'S EYES  
14 ONLY" or "CONFIDENTIAL." Each party shall attach a copy of such written statement to the  
15 face of the transcript and each copy thereof in its possession, custody or control. Until the fifteen-  
16 day period lapses or until such a designation has been made, whichever occurs sooner, all  
17 information contained in the transcript shall be treated as Attorney's Eyes Only Material.

18 9. Materials designated as Attorney's Eyes Only Material or Confidential Material  
19 under this Order, the information contained therein, and any summaries, copies, abstracts, or  
20 other documents derived in whole or in part therefrom shall be used only for the purpose of the  
21 prosecution, defense, or settlement of this action, and for no other purpose. Prohibited uses  
22 include, but are not limited to, patent prosecution (presently or hereafter), product development,  
23 business, financial or other purposes.

24 10. Nothing herein shall impose any restrictions on the use or disclosure by a party of  
25 material obtained by such party independent of activities pertaining to this action, or from  
26 disclosing its own Attorney's Eyes Only Material or Confidential Material as it deems  
27 appropriate. Nothing herein shall prevent a party from disclosing any document designated as  
28 "CONFIDENTIAL – ATTORNEY'S EYES ONLY" or "CONFIDENTIAL," or its contents, to

any individual identified on the face of the document as the originator, author or a recipient of the document, or to any person whose testimony prior to being shown the document clearly and unambiguously reveals that he or she has seen the document, or to any person as to whom someone else has clearly and unambiguously testified that he or she previously provided the document to that person. Nothing herein shall prevent a party from disclosing any document designated as "CONFIDENTIAL – ATTORNEY'S EYES ONLY" or "CONFIDENTIAL," or its contents, to any employee of the party which produced the document during such employee's deposition.

11. If Attorney's Eyes Only Material or Confidential Material, including any designated portion of a deposition transcript, is included in any papers to be filed in Court, such papers shall be labeled "Confidential – Subject to Court Order" and filed under seal until further order of this Court. *NT pursuant to LR 79.5*

12. In the event that any Attorney's Eyes Only Material or Confidential Material is used in any court proceeding in this action, it shall not lose its confidential status through such use, and the party using such material shall take steps reasonably available to protect its confidentiality during such use.

13. This Order shall be without prejudice to the rights of the parties (i) to bring before the Court at any time the question of whether any particular document or information is Attorney's Eyes Only Material or Confidential Material or whether its use should be restricted, or (ii) to present a motion to the Court under Fed. R. Civ. P. 26(c) for a separate protective order as to any particular document or information, including restrictions differing from those specified herein. This Order shall not be deemed to prejudice the parties in any way in any future application for modification of this Order.

14. Nothing herein shall be construed as a waiver of the right of any party to object to the taking of or the admissibility of any testimony or other evidence where such objection involves Attorney's Eyes Only Material or Confidential Material. The inadvertent or unintentional disclosure of Attorney's Eyes Only Material or Confidential Material shall not be

1 deemed a waiver in whole or in part of a party's claim of confidentiality as to the specific  
2 information disclosed.

3 15. Nothing herein shall be construed to effect an abrogation, waiver or limitation of  
4 any kind on the right of the parties to assert attorney-client privilege, work-product privilege, or  
5 any other applicable discovery or trial privilege.

6 16. In the event of a disclosure of material designated by another as Attorney's Eyes  
7 Only Material or Confidential Material other than in the manner authorized by this Order,  
8 counsel for the party responsible for the disclosure shall immediately notify opposing counsel of  
9 all of the pertinent facts, and make every effort to prevent further disclosure by, among other  
10 steps, retrieving all such disclosed materials and copies of such materials and having any  
11 unauthorized persons to whom disclosure was made sign the written acknowledgment, in the  
12 form of Attachment A hereto. The Court may, upon noticed motion, order such further and  
13 additional relief as it deems necessary and just.

14 17. The recipient of any Attorney's Eyes Only Material or Confidential Material that  
15 is provided under this Order shall maintain such information in a secure and safe area and shall  
16 exercise the same standard of due and proper care with respect to the storage, custody, use and/or  
17 dissemination of such information as is exercised by the recipient with respect to its own highly  
18 confidential and/or proprietary information.

19 18. Nothing in this Order shall bar or otherwise restrict any attorney herein from  
20 rendering advice to his client with respect to this litigation and, in the course thereof, relying in a  
21 general way upon his examination of Attorney's Eyes Only Material or Confidential Material  
22 produced or exchanged herein; provided, however, that in rendering such advice and in otherwise  
23 communicating with his client, the attorney shall not violate this Order by disclosing the contents  
24 of or the source of any Attorney's Eyes Only Material or Confidential Material produced by the  
25 other party herein and designated by such producing party as being "CONFIDENTIAL –  
26 ATTORNEY'S EYES ONLY" or "CONFIDENTIAL," unless otherwise permitted by this Order.

27 19. This Order is entered solely for the purpose of facilitating the exchange of  
28 documents and information between the parties to this action without involving the Court

1 unnecessarily in the process. Nothing in this Order nor the production of any information or  
2 document under the terms of this Order nor any proceedings pursuant to this Order shall be  
3 deemed to have the effect of an admission or waiver by either party or of altering the  
4 confidentiality or non-confidentiality of any such document or information or altering any  
5 existing obligation of any party or the absence thereof.

6         20. This Order shall survive the final termination of this action, to the extent that the  
7 information contained in Attorney's Eyes Only Material or Confidential Material is not or does  
8 not become known to the public. However, any and all retained Attorney's Eyes Only Materials  
9 or Confidential Materials which have remained confidential up to the final termination of the  
10 litigation shall remain protected in accordance with the provisions of this Order. Upon final  
11 termination of this case, counsel for the parties shall each be permitted to retain one copy of the  
12 pleadings, the transcripts of any hearings or trials, and the exhibits introduced or otherwise used  
13 in any such hearings or trials. Counsel for the parties shall destroy or assemble and return to  
14 each other all other documents, material and deposition transcripts designated as Attorney's Eyes  
15 Only Material or Confidential Material and all copies or summaries of the same. The Court shall  
16 retain jurisdiction to resolve any dispute concerning the use of information disclosed hereunder  
17 for a period of six months subsequent to the termination of this action.

18  
19 SO ORDERED this 9<sup>th</sup> day of January, 2008.

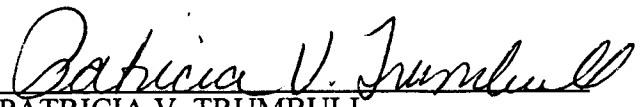
20  
21   
22 PATRICIA V. TRUMBULL  
23 United States Magistrate Judge  
24  
25  
26  
27  
28

EXHIBIT A

CONFIDENTIALITY UNDERTAKING

I, \_\_\_\_\_, do solemnly swear or affirm that:

1. My address is: \_\_\_\_\_.

2. My present employer is: \_\_\_\_\_.

3. My present occupation or job description is: \_\_\_\_\_.

4. I am fully familiar with the terms of the Stipulated Protective Order (the "Order") entered in United Epitaxy Company, Ltd. v. Hewlett-Packard Company, United States District Court for the Northern District of California, Case No. C 00-2518 CW (PVT). I hereby agree to comply with and be bound by the terms and conditions of said Order unless and until modified by further order of this Court. I hereby consent to the jurisdiction of said Court for purposes of enforcing this Order.

5. I understand that I am to retain all copies of any materials that I receive which have been designated "CONFIDENTIAL – ATTORNEY'S EYES ONLY" or "CONFIDENTIAL" in a manner sufficient to secure the confidentiality of such materials from all others, including any co-workers, employees, supervisors, agents or other acquaintances. I specifically agree to maintain such materials in a container, drawer, room or other safe place in a manner consistent with the Stipulated Protective Order, and all copies are to remain in my custody until I have completed my assigned or legal duties, whereupon all copies are to be returned or destroyed as specified in the Order. I acknowledge that the return or subsequent destruction of such materials shall not relieve me from any of the continuing obligations imposed upon me by the Order.

Dated: \_\_\_\_\_

By: \_\_\_\_\_